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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DAYMON MOORE,
12 Petitioner,

13 v.

14 L.E. SCRIBNER, Warden,
15 Respondent.
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NO. EDCV 08-1754-SVW (AGR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

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19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the petition, records
20 on file, and the Report and Recommendation of the United States Magistrate
21 Judge. Further, the Court has engaged in a *de novo* review of those portions of
22 the Report to which Petitioner has objected. The Court accepts the findings and
23 recommendation of the Magistrate Judge.

24 In Ground Two, Petitioner alleged his trial counsel was ineffective for failing
25 to move to suppress his confession because Petitioner was arrested without a
26 warrant. (Petition at 10-12.) Petitioner argues his subsequent confession was
27 inadmissible because it was “obtained by exploitation of an illegal arrest.” (Reply
28 at 14-15.)

1 Petitioner was arrested at his mother's and brother's (Joe Moore's) home.
2 (Report at 35.) The Report assumed Petitioner was arrested without a warrant.
3 (*Id.* at 32 n.18.) According to the police, Joe Moore invited them into the house
4 where they found Petitioner. (*Id.* at 35.) The Report found the police had
5 probable cause to arrest petitioner and, therefore, Petitioner's counsel could not
6 have been deficient for not making a meritless motion to suppress Petitioner's
7 confession. (*Id.* at 36.)¹

8 Petitioner argues that a declaration signed by his brother on September 26,
9 2007, three and a half years after Petitioner was convicted, contradicts the police
10 report of what happened. (Objections at 3.) According to Joe Moore, he never
11 gave permission for the police to enter the house. (Petition, Ex. A.)

12 Even assuming the police lacked consent, as long as the police had
13 probable cause to arrest Petitioner, his subsequent confession would not be
14 excluded. See *New York v. Harris*, 495 U.S. 14, 19, 110 S. Ct. 1640, 109 L. Ed.
15 2d 13 (1990). In *Harris*, the police went to Harris' apartment and knocked on the
16 door. *Id.* at 15. Harris let them in. *Id.* Inside the house, Harris waived his rights
17 and confessed to the crime. *Id.* at 16. Harris was arrested, taken to the police
18 station, again informed of his rights, and signed a confession. *Id.* The issue was
19 whether the statement signed by Harris at the police station violated his Fourth
20 Amendment rights. *Id.* (citing *Payton v. New York*, 445 U.S. 573, 100 S. Ct.
21 1371, 63 L. Ed. 2d 639 (1981), "which held that the Fourth Amendment prohibits
22 the police from effecting a warrantless and nonconsensual search into a

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24 ¹ Petitioner argues the police required exigent circumstances to enter his
25 mother's and brother's home. (Objections at 2.) Assuming the police had
26 permission to enter the home, Petitioner is incorrect. See *Illinois v. Rodriguez*,
27 497 U.S. 177, 181, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990) ("The Fourth
28 Amendment generally prohibits the warrantless entry of a person's home,
whether to make an arrest or to search for specific objects. The prohibition does
not apply, however, to situations in which voluntary consent has been obtained,
either from the individual whose property is searched or from a third party who
possesses common authority over the premises." (internal citations omitted)).

1 suspect's home in order to make a routine felony arrest."). The *Harris* court
2 accepted the lower court's finding that "Harris did not consent to the police
3 officers' entry into his home" and its conclusion that the police had probable
4 cause to arrest him. *Id.* at 17. The court held that the exclusionary rule did not
5 apply "in this context because the rule in *Payton* was designed to protect the
6 physical integrity of the home; it was not intended to grant criminal suspects, like
7 Harris, protection for statements made outside their premises where the police
8 have probable cause to arrest the suspect for committing a crime." *Id.*; see also
9 *United States v. Crawford*, 372 F.3d 1048, 1056 (9th Cir. 2004) ("After *Harris*, the
10 presence of probable cause to arrest has proved dispositive when deciding
11 whether the exclusionary rule applies to evidence or statements obtained after
12 the defendant is placed in custody.").

13 Accordingly, Petitioner's objection is overruled. Petitioner's remaining
14 objections are without merits.

15 IT IS ORDERED that judgment be entered denying the petition and
16 dismissing this action with prejudice.

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18 DATED: September 21, 2012



STEPHEN V. WILSON
United States District Judge